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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/505,232

04/18/2005

Orde Levinson

3885

24932 7590 10/14/2008  
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EXAMINER

FOREMAN, JONATHAN M

ART UNIT

PAPER NUMBER

3736

NOTIFICATION DATE

DELIVERY MODE

10/14/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/505,232

**Applicant(s)**

LEVINSON, ORDE

**Examiner**

JONATHAN ML FOREMAN

**Art Unit**

3736

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 and 9-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9, 11, 12, 15 and 16 is/are rejected.
- 7) ☒ Claim(s) 10, 13 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Objections*

1. Claim 16 is objected to because of the following informalities: claim 16 refers to an “open end” rather than an “inlet end”. Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 - 7, 9, 11, 12, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 01/74275 to Levinson in view of U.S. Patent No. 4,252,132 to Kuntz.

In regard to claims 1 - 7, 11, 12, 15 and 16, Levinson discloses a urine collection device (Figure 3) including a urine receptor (1) having an outlet aperture (2), the outlet aperture flaring out to a rim (5) defining a perimeter of an inlet area into which a user urinates; a generally elongate tapered tubular member (3) having an outlet end and an inlet end, the inlet end being connected to and extending from the outlet aperture of the urine receptor; the elongate tubular member including a sampling outlet (60a) provided in a side surface thereof at a point intermediate the outlet end and the inlet end, the sampling outlet is formed as an open passage extending from the side surface externally of the tubular member and defining a coupling for releasably mounting an open topped urine sample collection container (70). However, Levinson fails to disclose the open passage including an end extending from the side surface internally of the tubular member and defining a flow director with an opening to the passage, the flow director having a raised elevation relative to

the side surface and which is formed to direct urine flowing in the tubular member past the opening. Kuntz discloses a urine receptor having a open passage having one end extending from a surface externally of the member and defining a coupling for releasably mounting (Col. 3, lines 57 - 58) an open topped sample collection container (18) and the other end extending from the side surface internally of the member and defining a flow director with an opening to the passage, the flow director having a raised elevation relative to the side surface and which is formed to direct urine flowing in the tubular member past the opening (70; Col. 2, lines 25 - 42). The flow director includes a projection along the member (Figure 3). The projection is provided upstream and downstream of the opening (Figure 3). The projection upstream the opening as a surface inclined relative to the surface of the member (Figure 3). Kuntz discloses the projection including a wall that extends across the member corresponding to the upstream edge of opening (Figure 4). The flow director is formed to channel the urine flow along either side of the aperture. Kuntz teaches the sampling outlet including a further open passage with one end extending to the coupling an the other end extending from the surface internally of the member and defining an opening from which air in the collection container can escape into the tubular member (Col. 3, lines 47 - 51). The other end of the further passage extends into the member by an amount that is greater than the first passage (Col. 3, lines 47 - 51). Kuntz teaches a covering means (60) provided adjacent the opening. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the open passage disclosed by Levinson to include an end extending from the side surface internally of the tubular member and defining a flow director as taught by Kuntz in order to isolate and collect contaminant-free urine from a patient (Col. 2, lines 20 - 21).

4. In regard to claim 9, Levinson in view of Kuntz disclose the open passage extending into the tubular member, but fail to disclose the height being between 20% and 60% of the internal

dimension of the tubular member. However, a change in the size of a prior art device is a design consideration within the skill of the art. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the height of the open passage to be between 20% and 60% or any height as desired in order to allow more or less initial urine flow to bypass the urine collection container.

***Allowable Subject Matter***

5. Claims 10, 13 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN ML FOREMAN whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. M. F./  
Examiner, Art Unit 3736

/Max Hindenburg/  
Supervisory Patent Examiner, Art Unit 3736